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EXAMINER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *29 January 2009*.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-3,5,7,9 and 12-16* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-3,5,7,9 and 12-16* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

1.   This Office Action is made in response to Amendment After Non-Final Rejection

("Reply"), filed January 29, 2009. Applicant has amended Claims 1, 7, and 9; canceled

Claims 6, 8, 10, and 11; and no claims have been added. As amended, Claims 1-3, 5,

7, 9, 12-16 are presented for examination.

2.   In Office Action of November 14, 2008 ("Office Action"):

Claims 1, 2, 3, 12, and 16 were rejected under 35 U.S.C. 103(a) as being

unpatentable over Finseth et al., United States Patent (6,754,906 A1), hereinafter

"Finseth" in view of Thompson et al., United States Patent Application Publication

(2003/0018973 A1), hereinafter "Thompson".

Claim 5 was rejected under 35 U.S.C. 103(a) as being unpatentable over the

combination of Finseth and Thompson as applied to Claim 1 above, and further in view

of Lin, United States Patent (6,934,917 B2).

Claims 6, 8, and 10 were rejected under 35 U.S.C. 103(a) as being unpatentable

over the combination of Finseth and Thompson as applied to Claim 1 above, and further

in view of Finseth et al., United States Patent (6,813,775 B1) hereinafter "Finseth

('775)".

Claims 7, 9, and 11 were rejected under 35 U.S.C. 103(a) as being unpatentable

over the combination of Thompson, Finseth, and Finseth ('775) as applied to Claims 6

and 8 above, and further in view of Eldering et al., United States Patent (7,240,355 B1)

hereinafter "Eldering".

Claims 13, 14, and 15 were rejected under 35 U.S.C. 103(a) as being

unpatentable over the combination of Finseth and Thompson as applied to Claim 1

above, and further in view of Candelore, United States Patent Application Publication

(2002/0104081 A1).

Response to Arguments

3.   Applicant's arguments with respect to Claim 1 have been considered but are

moot in view of the new ground(s) of rejection.

4.   Applicant's arguments, See Reply Pages 5-7, have been fully considered but

they are not persuasive.

5.   Regarding Claim 1, Applicant presents that "[t]he Examiner is unclear as to

whether the first and second informational material are both being read upon the EPG,

or whether the first informational material would be one category, while the second

informational material would be another" (Reply Page 5, in response to citations of the

Finseth reference as presented in Office Action Pages 4-6).

To clarify, the Examiner submits that Figures 4 and 5 of Finseth have been cited

as addressing the "first informational material" and the "second informational material",

and in particular Regions 98B and 98C respectively. The Examiner is interpreting

categories of EPG 90A of Finseth to demonstrate different informational materials (i.e.

"News" and "Sports").

6.   Applicant further presents that Finseth and Thompson would not be usable together in addressing the Claim 1 limitation of "a relative ranking between said first and said second informational material is automatically determined based upon the duration that said user views respective instances of said first and second informational material" because "Thompson's list is of channels a viewer tunes to, and modification of that list is based on the tie that a user spends watching those channels" (Reply Page 6). The Examiner respectfully disagrees.

The Examiner submits that Finseth has been used to teach an interface where each organizational level is selected by the user, customizable based on the user's selection and user preferences (Office Action Page 6; with further reference to Finseth Abstract, Col. 12 Lines 41-52, and Col. 14 Lines 17-32). Thompson has been used to teach a method of computing a schedule of channels based on a duration of time between each of a series of commands performed by a user (Office Action Page 6; with further reference to Thompson Abstract, Paragraphs [0006-0007, 0027-0032]). In addition, the Examiner notes that Thompson discloses "[t]he method is scaleable to systems with many channels of content, can work in conjunction with other systems such as nested channels lists" (Paragraph [0007]). It is the Examiner's position that this passage demonstrates that the teachings of Thompson are applicable to navigation of program guide information (i.e. a nested channel list) and therefore usable together with the teachings of Finseth.

7.   Applicant additionally presents that the cited prior art does not teach the amended Claim 1 limitation of "where said duration excludes respective viewing

intervals less that a minimum duration and greater that a maximum duration" (Reply

Page 6). The Examiner respectfully disagrees.

The Examiner submits that the limitation in question was previously presented in

part by no canceled Claims 6, 8, and 10 using the Finseth ('775). In particular, the

Examiner has addressed the claimed "minimum duration" with Finseth ('775) teaching a

technique of filtering out history data when it is determined that a user is watching

content for "less that a set threshold" for the purpose of detecting channel surfing (Office

Action Page 9; with further reference to Finseth ('775) Col. 10 Lines 53-63). In addition,

the Examiner has addressed the claimed "maximum duration" with Finseth ('775)

teaching a technique of filtering out history data when it is determined that a user is

watching content for "greater than a set threshold" for the purpose of detecting

instances when a user has forgotten to turn off the television (Office Action Page 10;

with further reference to Finseth ('775) Col. 10 Lines 53-63). Therefore, the Examiner

submits that Finseth ('775) addresses the limitation of "where said duration excludes

respective viewing intervals less that a minimum duration and greater that a maximum

duration".

Claim Rejections - 35 USC § 103

8.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains.
Patentability shall not be negatived by the manner in which the invention was made.

9.   Claims 1, 2, 3, 12, and 16 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Finseth et al., United States Patent (6,754,906 A1), hereinafter

"Finseth" in view of Thompson et al., United States Patent Application Publication

(2003/0018973 A1), hereinafter "Thompson" and in further view of Finseth et al., United

States Patent (6,813,775 B1) hereinafter "Finseth ('775)".

10.   In regards to Claim 1, Finseth teaches a method for modifying a set of

informational material for presentation on a video presentation device for a user

comprising (Flow Diagrams of Figs. 11, 12A, and 12B, as described in Col. 21 Line 16--

Col. 22 Line 25):

        presenting programming content to a user in a first display mode of said video

presentation device, said first video display mode displaying programming content of a

user-selected channel, to which said display device is tuned (audio and video

information for selected television channel are presented on Television 66, as described

in Col. 12 Lines 10-25 and shown in Fig. 3);

        receiving a first instance of a signal associated with the depression of a button on

a remote for controlling said video presentation device (Remote Control 86 of Fig. 3

emits a variety of signals in response to user interactions such as a user request for a

program guide using a "guide" button, as described in Col. 11 Line 66—Col. 12 Line 25;

with further reference to Col. 20 Lines 33-67), and in response to the receipt of said first

instance of said signal, presenting first informational material to said user in a second

display mode of said presentation device while said display device is tuned to said user-

selected channel, where said first informational material is unrelated to said user-

selected channel (Electronic Program Guide 90A of Figs. 4 and 5 presents

Organizational Categories 92 such as "News" displayed in Region 98B, as described in

Col. 12 Line 28—Col. 15 Line 28);

receiving a second instance of said signal while said first informational material is

displayed to said user (Remote Control 86 of Fig. 3 emits a variety of signals in

response to user interactions such as a user request for a program guide using a

"guide" button, as described in Col. 11 Line 66—Col. 12 Line 25; with further reference

to Col. 20 Lines 33-67), and in response to the receipt of said second instance of said

signal, presenting second informational material to said user while said display device is

tuned to said user-selected channel, where said second informational material is

unrelated to said user-selected channel (Electronic Program Guide 90A of Figs. 4 and 5

presents Organizational Categories 92 such as "Sports" displayed in Region 98C, as

described in Col. 12 Line 28—Col. 15 Line 28); and

where said first and second informational material, respectively, are sequentially

adjacent ones in a list of preferred informational material for said user and

maintained on said video presentation device (Organizational Categories 92 are

presented in adjacent Regions 98A-98F, as shown in Figs. 4 and 5. In addition, the

user is able to use the Organizational Categories in order to display programming which

fits user preferences, as described in Col. 12 Lines 41-52; with further reference to Col.

20 Line 45—Col. 21 Line 15).

Finseth teaches that each organizational level is selected by the user and is customizable based on the user's selection of, for instance, number of levels to display (first, second, third, etc.), as described in Col. 14 Lines 17-32. Finseth further teaches organizing the EPG based on user preference by displaying only programming information that fits the user's preferences, as described in Col. 12 Lines 41-52. However, Finseth does not teach wherein a relative ranking in said list between said first and said second informational material is automatically determined based upon a duration that said user views respective instances of said first and second informational material, calculated over a temporal time period.

In a similar field of invention, Thompson teaches a method for computing a schedule of channels based on a duration of time between each of a series of commands performed by a user (Abstract). Thompson's method involves determining the duration of a time period during which each channel is tuned and, based on this user interaction, prioritizing the schedule of channels according to the duration of time period. The schedule is dynamically adjusted according to the amount of time a user dwells on a single channel before moving to the next (as descried in Paragraphs [0006-0007]; with further reference to Figs. 2 and 3, as described in Paragraphs [0027-0032]).

It would have been obvious to one of ordinary skill in the art at the time of the invention of combined the method of presenting informational material to a user in the form of Organizational Categories, as taught by Finseth, with the method of providing a priority list of informational material based on the duration a user dwells on each item, as taught by Thompson, in order to provide a user with an efficient means for navigating

a large number of channels to quickly find media of interest (as Thompson discusses in Paragraphs [0003-0005]).

The combination of Finseth and Thompson teaches ranking informational material within an interface based upon the duration a of time the user spends on each informational, but does not explicitly disclose where said duration excludes respective viewing intervals less that a minimum duration and greater that a maximum duration

In a similar field of invention, Finseth ('775) teaches a method of developing a user's selection history by keeping track of the amount of time each television program is watched. Finseth ('775) discloses a technique to filter out history data if the users viewing time is less than a given threshold in order to detect channel surfing (as described in Col. 10 lines 53-63). Finseth ('775) additionally discloses a technique to filter out history data if the users viewing time is greater than a given threshold in order to detect, for example, when the user has forgotten to turn off the receiver (as described in Col. 10 lines 53-63).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combined the method of Finseth and Thompson with the method of Finseth ('775) in order to filter out informational materials if the users viewing time is less than a given threshold because, this filtering process would eliminate the erroneous data generated as a user skips through the channel content that is undesirable. Finseth ('775)'s less than threshold would account for the content the user skips over during a period of channel surfing and would therefore more accurately develop a preference list of content for the user.

11.	In regards to Claim 2, Finseth, Thompson, Finseth ('775) teach the method of Claim 1 where the second informational material is presented in a third display mode different from each of the first and second display modes (Finseth also teaches displaying the EPG in a display mode that presents program titles to the user based on broadcast time and organized adjacently to topical subjects, as shown in Figure 4 and described in Col. 13 Lines 43-62; with particular reference to elements 94 within time categories 100A and 100B).

12.	In regards to Claim 3, Finseth, Thompson, Finseth ('775) teach the method of Claim 1 wherein the second informational material is presented in a third display mode different from each of the first and second display modes (Finseth also teaches displaying the EPG in a display mode that presents program titles to the user based on broadcast time and organized adjacently to topical subjects, as shown in Figure 4 and described in Col. 13 Lines 43-62; with particular reference to elements 94 within time categories 100A and 100B).

13.	In regards to Claim 12, Finseth, Thompson, and Finseth ('775) teach the method of Claim 1 wherein the list includes less that all informational material available to the user through the video presentation device (Thompson teaches segregated channel "(A) list" and "(B) list", as described in Paragraph [0037]).

14.	In regards to Claim 16, Finseth, Thompson, and Finseth ('775) teach the method of Claim 1 wherein the list is determined in a manner free from explicit user definition (Thompson teaches functions performed by processor, which are described in Paragraph [0006] lines 12-17).

15.   Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over the

combination of Finseth, Thompson, Finseth ('775) as applied to Claim 1 above, and

further in view of Lin, United States Patent (6,934,917 B2).

16.   In regards to Claim 5, Finseth, Thompson, and Finseth ('775) teach a method of

modifying the set of informational materials for the user based upon the duration that

the different channels are selected over a temporal time period as described in Claim 1,

but do not teach that the temporal time period is a plurality of days.

        In a similar field of invention, Lin teaches a system and method for generating a

list of favorite channels automatically. In Lin's method, the time period in which the

user's activity can be one or more particular day(s), week(s), or month(s) (as described

in Col. 1, Lines 57-64).

        It would have been obvious to one of ordinary skill in the art at the time of the

invention to use Lin's method of monitoring the user for a plurality of days in the method

of Finseth, Thompson, and Finseth ('775) because a larger sum of data on a user of the

system would establish a more accurate preference channel list and, therefore, more

accurately represent the true likes/dislikes of the user.

17.   Claims 7 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over

the combination of Thompson, Finseth, and Finseth ('775) as applied Claim 1 above,

and further in view of Eldering et al., United States Patent (7,240,355 B1) hereinafter "Eldering".

18.   In regards to Claim 7, Finseth and Thompson teach a method of modifying the set of informational materials for the user based upon the duration that the different channels are selected over a temporal time period as described in Claim 1 and Finseth ('775) teaches a method of modifying based on a temporal time period of less then a threshold as described in Claim 1, but each do not teach the minimum duration is 3 seconds.

In a similar field of invention, Eldering teaches a subscriber characterization system with filters in which the subscriber's selections are monitored. Eldering discloses a channel surfing detection method, which involves disregarding a channel that is selected for only 3-4 seconds (as described in Col. 2 lines 19-45).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combined the method of Thompson, Finseth, and Finseth ('775) with the method of Eldering in order to accurately account for a user rapidly skipping undesirable content, by disregarding data characterized by channel surfing, because a more accurate representation of the users likes/dislikes in program content can be created.

19.   In regards to Claims 9, Finseth and Thompson teach a method of modifying the set of informational materials for the user based upon the duration that the different channels are selected over a temporal time period as described in Claim 1 and Finseth ('775) teaches a method of modifying based on a temporal time period of greater then a threshold as described in, but each do not teach the maximum duration is 45 seconds.

In a similar field of invention, Eldering teaches a subscriber characterization system with filters in which the subscriber's selections are monitored. Eldering discloses a method of detecting when a user is idle, which involves disregarding a channel when a lack of channel changes, volume changes, or any other selection changes activity for more than 3 hours ("dead periods" as described in Col. 2 lines 46-57).

The Examiner submits that a maximum duration of 45 seconds is a design choice based on the information being tracked. Thompson demonstrates a method of tracking a user's interaction with information such as nested channels lists in an EPG and Finseth ('775) and Eldering demonstrates a method of excluding information based on user inactivity exceeding a threshold in a magnitude of hours. The design choice of a maximum duration of 45 seconds would be equally advantageous in a situation where a user is interacting with text based information, such as the EPG of Finseth and Thompson, and would have been obvious to one of ordinary skill in the art at the time of the invention in order to eliminate the erroneous data generated when a user leaves the receiver on for an extended period of time without watching the content.

20.   Claims 13, 14, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Finseth, Thompson, and Finseth ('775) as applied to Claim 1 above, and further in view of Candelore, United States Patent Application Publication (2002/0104081 A1).

21.   In regards to Claims 13 and 15, Finseth, Thompson, and Finseth ('775) teach a method of modifying the set of informational materials for the user based upon the duration that the different channels are selected over a temporal time period as described in Claim 1, but do not teach that the modification can be based on the time of day that the user selects informational materials or day of the month that the user selects informational materials.

In a similar field of invention, Candelore teaches a method wherein the modification of a favorite channel list is based upon relative statistics, such as the time of day ("Start Time" and "End Time" of Table I, as shown and described in Col. 4 Lines 10-29) or the day of the month ("date" column of Table I, as shown and described in Col. 4 Lines 14-38) the different channels are selected.

It would have been obvious to one of ordinary skill in the art at the time of the invention to combined the method of Finseth, Thompson, and Finseth ('775) with the system of Lin in order have the ability to modify sets of informational materials for the user based upon the time of day or day of month because, as disclosed by Candelore:

> "… if one statistical count is limited to a fixed size, e.g., a bite, the statistical count will roll over at a maximum count of "255." Thus, the statistical data may become inaccurate after a certain count" (as described in Paragraphs [0004, 0005]).

The act of deleting content entries based on different time factors (as a function of time intervals), as performed by Candelore, would therefore eliminate the out dated entries of a favorites list, which would more accurately represent the current likes/dislikes of the user.

22.   In regards to Claims 14, Finseth, Thompson, and Finseth ('775) teach a method

of modifying the set of informational materials for the user based upon the duration that

the different channels are selected over a temporal time period, as described in Claim 1,

but does not teach that the modification can be based on the day of the week that the

user selects informational materials.

In a similar field of invention, Candelore teaches a method wherein a favorites list

is created based on a number of statistical factors, one of which is the day of the week a

particular channel is tuned (as described in Paragraph [0055] lines 12-19).

It would have been obvious to one of ordinary skill in the art at the time of the

invention to combined the method of Finseth, Thompson, Finseth ('775) with the system

of Candelore in order have the ability to modify sets of informational materials for the

user based upon the day of the week because, as disclosed by Candelore:

> "… if one statistical count is limited to a fixed size, e.g., a bite, the statistical count will roll over at
>
> a maximum count of "255." Thus, the statistical data may become inaccurate after a certain
>
> count" (as described in Paragraphs [0004, 0005]).

The act of deleting content entries based on different time factors (as a function of time

intervals), as performed by Candelore, would therefore eliminate the out dated entries of

a favorites list, which would more accurately represent the current likes/dislikes of the

user.

Conclusion

23.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the mailing date of this final action.

24.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to PATRICK A. RYAN whose telephone number is

(571)270-5086. The examiner can normally be reached on Mon to Thur, 8:00am -

5:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Scott Beliveau can be reached on (571) 272-7343. The fax phone number

for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

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Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/P. A. R./
Examiner, Art Unit 2427
Monday, May 11, 2009

/Scott Beliveau/
Supervisory Patent Examiner, Art Unit 2427